

REMARKS

Claims 1-18 are the pending claims being examined in the application. Claims 1, 10 and 18 are independent. Reconsideration and further examination are respectfully requested.

Claims 1-3, 5, 6, 8-13 and 15-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,859,840 (Singal) in view of U.S. Publication No. 2001/0029523 (Meternan); Claim 4 was rejected under 35 U.S.C. §103(a) as being unpatentable over Singal in view of Meternan, and further in view Dictionary of Computer Science, Engineering, and Technology by Phillip A. Laplante (Dictionary); Claim 7 was rejected under 35 U.S.C. §103(a) as being unpatentable over Singal in view of Meternan, and further in view of U.S. Patent No. 5,568,181 (Greenwood); Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Singal in view of Meternan, and further in view of U.S. Publication No. 2004/0128343 (Mayer). Reconsideration and withdrawal of the rejections are respectfully requested for at least the following reasons.

Claim 1 recites a client system for efficiently downloading a page of broadband content including at least one content file, the client system comprising: a mass storage device; a bandwidth measurement device determining during retrieval a bandwidth of a network connection over which a content file is retrieved; a download manager retrieving and storing in the mass storage device a portion of the content file, the download manager establishing a size of the portion to retrieve responsive to the determination made by the bandwidth measurement device; and a presentation manager retrieving the portion of the content file from mass storage and displaying the portion with a standard media player application, wherein the download manager retrieves a remainder of the content file in response to the presentation manager displaying the retrieved portion of the content file.

Singal's system for prefix caching media objects differs from the claimed subject matter of claim 1. Singal teaches delivering a media object to a user over a network, whereby the media object is divided into first portions and remaining portions. The first portions are stored on an edge server and the remaining portions are stored on an origin server, whereby the servers are in communication with the user. Upon receiving a request for delivery from a user, the edge server transmits the first portion of the media

object to the user. The edge server then request delivery of the remaining portions from the origin server. Singal merely teaches retrieving a next portion upon sending a next portion, from differing locations. Singal teaches retrieving the remainder of the media object after transmitting the first portion of the media object to the user.

Singal further teaches the edge server searching a prefix cache to determine if object information matching the media object requested by the user is stored. If the media object is not stored in the prefix cache (unavailable in storage), available bandwidth is examined and a transfer rate is reserved. The transfer rate being greater than zero and less than or equal to the available bandwidth. Subsequently, a new prefix cache size is calculated, whereby additional data may be loaded. The reserved transfer rate may be used to transfer the additional data that may be loaded. Singal merely teaches resizing a cache (storage) upon the determination that a media file is unavailable, and recalculating a transfer rate for additional data to be uploaded into the cache.

Applicant submits that Singal's system for caching media objects via altering the storage component's size and transfer rate for subsequent data upload upon the determination that a media file is not present in storage upon request from a user does not teach, suggest or disclose the claim subject matter of claim 1, which recites, *inter alia*, client system comprising a bandwidth measurement device determining during retrieval a bandwidth of a network connection over which a content file is retrieved; a download manager retrieving and storing in the mass storage device a portion of the content file, the download manager establishing a size of the portion to retrieve responsive to the determination made by the bandwidth measurement device; and a presentation manager retrieving the portion of the content file from mass storage and displaying the portion with a standard media player application, wherein the download manager retrieves a remainder of the content file in response to the presentation manager displaying the retrieved portion of the content file.

Singal is silent as to client system comprising a bandwidth measurement device determining during retrieval a bandwidth of a network connection over which a content file is retrieved; a download manager retrieving and storing in the mass storage device a portion of the content file, the download manager establishing a size of the portion to retrieve responsive to the determination made by the bandwidth measurement device, as

well as silent as to the download manager retrieving a remainder of the content file in response to the presentation manager displaying the retrieved portion of the content file, as recited in claim 1.

On pages 6-7 of the Office Action, the Examiner states that “Singal does not teach but Meternan teaches a presentation manager retrieving the portion of the content file from mass storage and displaying the portion with a standard media player application”. Applicant respectfully traverses the contention that Meternan cures the deficiencies of Singal.

Meternan’s system for accounting for variations in client capabilities in the distribution of a media presentation differs from the claimed subject matter of claim 1, and fails to teach or suggest the subject matter admittedly missing from Singal. Meternan teaches a buffer containing data that is decoded by a Tap of specialized bandwidth. After the data is decoded and proceeds to a Show Graph, which organizes software components that manipulates the data to present a show to a viewer. A check is made to determine if additional child signal paths are detected. If so, the child signals are traversed to determine if the signals are at the specified bandwidth of the Tap, whereupon they are added to the buffer. Subsequently, data contained in the buffer is decoded and passed to be rendered for viewing by a user.

Applicant submits that Meternan’s system for accounting for variations in client capabilities in the distribution of a media presentation does not teach, suggest or disclose the claimed subject matter of claim 1, which recites, *inter alia*, a presentation manager retrieving the portion of the content file from mass storage and displaying the portion with a standard media player application. Applicant submits that Meternan’s discussion of merely determining if data is in a buffer, or signals transmitted to the buffer require a specified bandwidth, and subsequently transmitting the satisfactory data is silent as to a presentation manager retrieving the portion of the content file from mass storage and displaying the portion with a standard media player application, as recited in claim 1.

Furthermore, on pages 5-6 of the Office Action, the Examiner states “[a]lthough it is not explicitly taught to measure the size of the preloaded prefix based on the bandwidth, it would be obvious...”. With regard to the rejections in the Office Action citing Official Notice of certain facts to reject the claims, the Examiner is respectfully

requested to provide documentary evidence that substantiates the facts Officially Noticed for each claim, as required to establish a prima facie case of obviousness under § 103(a).

Applicant cites MPEP §2144.03, which states:

“Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known...

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known...

It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based...

Any rejection based on assertions that a fact is well-known or is common knowledge in the art without documentary evidence to support the examiner's conclusion should be judiciously applied. Furthermore, as noted by the court in *Ahlert*, any facts so noticed should be of notorious character and serve only to "fill in the gaps" in an insubstantial manner which might exist in the evidentiary showing made by the examiner to support a particular ground for rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based..."

A respectful reminder is also made of the provisions of MPEP §2106 II. C:

"when evaluating the scope of a claim, every limitation in the claimed invention in the claim must be considered. Office personnel may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation. Instead, the claims as a whole must be considered."

When properly taken as a whole, the subject matter recited in claims is not disclosed or suggested by the applied art, let alone the facts purported to be well known by the Examiner. For at least these reasons, it is submitted that the grounds for rejection under § 103(a) where Official Notice is applied, are legally and factually deficient. Reconsideration and withdrawal of the §103(a) rejections are therefore respectfully requested.

The Examiner is respectfully requested to provide documentary evidence that substantiates the facts Officially Noticed for each claim, as required to establish a prima facie case of obviousness under § 103(a). (See MPEP §2144.03 referenced above).

Applicant respectfully submits that Singal, even if the facts officially noticed were true (a point not conceded), would not yield all of the elements in the presently cited claims, and therefore the combination cannot form the basis of a proper obviousness rejection.

Thus, because Singal and Meternan do not teach or suggest the above elements, it is respectfully submitted that Claim 1 is patentable over Singal and Meternan, and Applicant respectfully requests that the Examiner withdraw the rejection. Nor could Singal and Meternan, alone or in combination with any reference of record, render Claim 1 obvious, as no such combination would yield all of the elements in the presently recited claims. Therefore, Singal and Meternan cannot form the basis of a proper § 103 rejection and a combination with other references would not form the basis of a proper § 103 rejection. Therefore, Applicant respectfully requests withdrawal of these rejections.

For at least the foregoing reasons, Claim 1 and the claims that depend from Claim 1 are believed to be in condition for allowance. In addition, for at least the same reasons, Claims 10 and 18 are believed to be in condition for allowance; thus, the claims that depend from Claims 10 and 18 are also believed to be in condition for allowance. In view of the foregoing, the entire application is believed to be in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

Claim 4 was rejected under 35 U.S.C. §103(a) as being unpatentable over Singal in view of Meternan, and further in view Dictionary. It is respectfully submitted that the features described above with respect to Claim 1, from which Claim 4 depends, are applicable to this claim as well, and that Dictionary does not remedy these deficiencies. Therefore, Applicants submit that a combination of Singal, Meternan and Dictionary would not yield all of the elements in the presently cited claims, and therefore the combination cannot form the basis of a proper obviousness rejection. Moreover, it is respectfully submitted that even if the combination of references yielded all of the claim elements, which it does not, the alleged reasoning for the combination of Singal, Meternan and Dictionary is insufficiently presented.

Claim 7 was rejected under 35 U.S.C. §103(a) as being unpatentable over Singal in view of Meternan, and further in view of Greenwood. It is respectfully submitted that the features described above with respect to Claim 1, from which Claim 7 depends, are applicable to this claim as well, and that Greenwood does not remedy these deficiencies. Therefore, Applicants submit that a combination of Singal, Meternan and Greenwood would not yield all of the elements in the presently cited claims, and therefore the combination cannot form the basis of a proper obviousness rejection. Moreover, it is respectfully submitted that even if the combination of references yielded all of the claim elements, which it does not, the alleged reasoning for the combination of Singal, Meternan and Greenwood is insufficiently presented.

Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Singal in view of Meternan, and further in view of Mayer. It is respectfully submitted that the features described above with respect to Claim 1, from which Claim 14 depends, are applicable to this claim as well, and that Mayer does not remedy these deficiencies. Therefore, Applicants submit that a combination of Singal, Meternan and Mayer would not yield all of the elements in the presently cited claims, and therefore the combination cannot form the basis of a proper obviousness rejection. Moreover, it is respectfully submitted that even if the combination of references yielded all of the claim elements, which it does not, the alleged reasoning for the combination of Singal, Meternan and Mayer is insufficiently presented.

Having responded to all objections and rejections set forth in the outstanding Office Action, it is submitted that the currently pending claims are in condition for allowance and Notice to that effect is respectfully solicited. Additional characteristics or arguments may exist that distinguish the claims over the prior art cited by the Examiner, and Applicant respectfully preserves their right to present these in the future, should they be necessary. In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicant's undersigned representative.

The Applicant's attorney may be reached by telephone at 212-801-9220. All correspondence should continue to be directed to the address given below, which is the address associated with Customer Number 76058.

The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-1561. Please ensure that the Attorney Docket Number is referenced when charging any payments or credits for this case.

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Respectfully submitted,



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